UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,812	02/10/2001	Marc Alan Ehrlich	ARC920000114US1	8657

7590   03/29/2004

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EXAMINER
FADOK, MARK A

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 03/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-25_ is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) _1-25_ is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☒ The drawing(s) filed on _10 February 2001_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _2_____.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 4/17/2001 fails to comply with 37 CFR

1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each

publication or that portion which caused it to be listed; and all other information or that

portion which caused it to be listed. It has been placed in the application file, but the

information referred to therein has not been considered. The US patents have been

reviewed, however the UDDI white paper cited on page two of the IDS was not,

because it was not available.

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the

references as applied to the claims below for the convenience of the applicant.

Although the specified citations are representative of the teachings in the art and are

applied to the specific limitations within the individual claim, other passages and figures

may apply as well. It is respectfully requested from the applicant, in preparing the

responses, to fully consider the references in entirety as potentially teaching all or part

of the claimed invention, as well as the context of the passage as taught by the prior art

or disclosed by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fergerson et al (US 5,966,697) in view of Freeney, Jr. (US 6,076,071) further in view of Official Notice.

In regards to claim 1, Fergerson discloses a system for managing an on-line virtual shopping cart which contains information about an item offered by a host merchant, comprising: a shopping cart manager that creates and manages the virtual shopping cart (abstract);

Fergurson teaches extracting information from a plurality of web sites (col 4, lines 49-57) and searching a plurality of merchants for a particular item (col 2, lines 27-41, searching a plurality of sites for a particular item), but does not specifically mention that this is occurring at a host merchant's site. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the software at a host merchant's site instead of a users site to conduct the comparison, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse, 86 USPQ 70.* Furthermore, Ferguson would have been motivated to change this comparison shopping to a host merchant, because this would expand the usage of the system of Fergerson and increase revenues. and

Fergerson teaches the importance of comparison shopping (col 1, lines 40-67) and editing a purchase based on a rival merchant's product chosen by a buyer (col 2, lines 27-40), but does not specifically mention that the host merchant's offer is dynamically changed based on a comparison of a rival merchant's offer. Freeny teaches making automatic price changes based on a comparison with the competition's prices (FIG 1 and col 3, lines 42-60). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include automatically changing the prices based on information from competitors, because this would permit the user of the system to retain a sale that might have been lost to a competitors offer and increase sales.

In regards to claim 2, the combination of Fergerson/Freeny teaches collecting information about rival merchant offers (col 5, lines 1-67), but does not specifically mention that the rival merchant's offer is validated. It was old and well known in the art at the time of the invention to validate information of a competing offer before offering a counter offer. It would have been obvious to a person having ordinary skill in the art to include in Fergerson/Freeny validating the rival merchant's offer, because this would assure that a better offer was not presented based on incorrect information, which would cause the company to loose profits needlessly.

In regards to claim 3, Fergerson teaches including a persistent database that stores information about the host merchant's item, the rival merchant's offer, and the virtual shopping cart (col 9, lines 35-38).

In regards to claim 4, Fergerson teaches a checkout module (FIG 2).

In regards to claim 5, Fergerson teaches wherein the item information includes any one or more of: an item number, which is the number used to represent the item;

an item description, which is the description of an item;

a price, which is the price of the item quoted by the host merchant;

a rival offer, which is the offer made by the rival merchant;

a merchant identifier, which is the identifier of the rival merchant (Col 5, lines 25-67).

In regards to claim 6, Fergerson teaches a system administrator (Freeney, col 3, lines 40-60, owner control system).

In regards to claim 7, The combination of Fergerson/Freeny teaches a shopping cart that comparison shops at multiple merchant sites collecting information (see response to claim 1), but does not specifically mention that this is done using a browser. It was old and well known at the time of the invention to use a browser to search and collect information at different websites. It would have been obvious to a person of ordinary skill in the art to include the use of a browser because this would permit the system of Fergerson to employ software which is readily available to search and access information from a plurality of sites.

In regards to claim 8, Fergerson teaches wherein the shopping cart manager is responsible for performing any one or more of the following actions:

detach action, which writes the shopping cart to the persistent database and marks the shopping cart as detached;

checkout action, which initiates a purchase operation of the item offered by the host merchant;

save action, which writes the shopping cart to the persistent database and marks the shopping cart as saved;

resume action, which retrieves a previously saved shopping cart from the persistent database;

delete action, which removes a previously saved copy of the shopping cart;

add item action, which creates and adds a item to the shopping cart;

update item action, which retrieves a designated cart item and updates corresponding information fields;

delete item action, which deletes the designated cart item;

compare item action, which determines whether a rival merchant is underbidding the host merchant's offer for an item (col 4 and 5).

In regards to claim 9, Fergerson teaches wherein the shopping cart is in any one of the following states: a detached state, or a saved state (col 5, lines 5-15).

In regards to claim 10, Fergerson teaches wherein the persistent database includes information about rival merchants, which allows the validation module to monitor the rival merchants (col 5, lines 25-67); and

wherein the information maintained on the rival merchants includes any one or more of:

frequency that shoppers initiate comparison shopping at specific rival merchants;

frequency that the rival merchants underbid the host merchant's offer;

amounts by which the rival merchant underbid the host merchant's offer (Freeny,

col 11, lines 8-27, competition pricing information). It would have been obvious to a person having ordinary skill in the art to include in Fergerson the comparison information from competing merchants, because this would improve the shoppers experience and assure that the customer is getting the best deal which will keep the customer coming back and thus increase sales.

In regards to claim 11, Fergerson discloses a method of managing an on-line virtual shopping cart that contains information about an item offered by a host merchant, comprising:

initiating a shopping session;

creating and managing the virtual shopping cart;

performing a comparison between a host merchant's offer and a rival merchant's offer; and when applicable,

dynamically changing the item information in the virtual shopping cart, to reflect a change in the host merchant's offer based on the comparison (see response to claim 1).

In regards to claim 12, Fergerson teaches the step of validating the rival merchant's offer (see response to claim 2).

In regards to claim 13, Fergerson teaches the step of storing information about the host merchant's item, the rival merchant's offer, and the virtual shopping cart (see response to claim 3).

In regards to claim 14, Fergerson teaches activating and managing a persistent shopping session at a rival merchant's site (see response to claim 7).

In regards to claim 15, Fergerson teaches wherein managing the virtual shopping cart includes performing any one or more of the following actions:

detach action, which writes the shopping cart to the persistent database and marks the shopping cart as detached;

checkout action, which initiates a purchase operation of the item offered by the host merchant;

save action, which writes the shopping cart to the persistent database and marks the shopping cart as saved;

resume action, which retrieves a previously saved shopping cart from the persistent database;

delete action, which removes a previously saved copy of the shopping cart;

add item action, which creates and adds an item to the shopping cart;

update item action, which retrieves a designated cart item and updates

corresponding information fields;

delete item action, which deletes the designated cart item;

compare item action, which determines whether a rival merchant is underbidding

the host merchant's offer for an item (see response to claim 8).

In regards to claim 16, Fergerson teaches wherein if the rival merchant's offer is

more competitive than the host merchant's offer, presenting the host merchant with an

opportunity to counter-offer the rival merchant's offer (see response to claim 1 and col 9,

lines 12-27).

In regards to claim 17, Fergerson teaches wherein, if the host merchant is

unable to make a counter-offer, allowing a shopper who initiates the shopping session

to remove the item from the shopping cart (col 12, lines 20-35).

In regards to claim 18, Fergerson teaches wherein upon termination of the

shopping session, providing the shopper with an opportunity to purchase the host

merchant's item (FIG 10D).

In regards to claim 19, Fergerson teaches wherein upon termination of the shopping session, returning the shopper to a host merchant's site (see response to claim 1).

In regards to claim 20, Fergerson teaches wherein the step of activating the persistent shopping session is initiated when the shopper leaves the host merchant's site (see response to claim 1 and FIG 3).

In regards to claim 21, Fergerson teaches deactivating the persistent shopping session when the shopper returns to the host merchant's site (see response to claim 1 and col 5., lines 10-14).

In regards to claim 22, Fergerson discloses a computer program product for managing an on-line virtual shopping cart which contains information about an item offered by a host merchant, comprising:

a shopping cart manager that creates and manages the virtual shopping cart;

an extract and verify module that performs a comparison between a host merchant's offer and a rival merchant's offer; and

a counter offer module which, when applicable, dynamically changes the item

information in the virtual shopping cart, to reflect a change in the host merchant's offer

based on the comparison by the extract and verify module (see response to claim 1).

In regards to claim 23, Fergerson teaches a validation module that validates the

rival merchant's offer (see response to claim 2).

In regards to claim 24, Fergerson teaches a persistent database that stores

information about the host merchant's item, the rival merchant's offer, and the virtual

shopping cart (see response to claim 3).

In regards to claim 25, Fergerson teaches a checkout module (see response to

claim 4).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to **Mark Fadok** whose telephone number is **(703) 605-

4252**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00

PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Vincent Millin** can be reached on **(703) 308-1065**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 308-1113**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

(703) 872-9306   [Official communications; including

After Final communications labeled

"Box AF"]

(703) 746-7206 [Informal/Draft communications, labeled

"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

Mark Fadok

Patent Examiner